IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2896 OF 2006

IN

ARBITRATION PETITION NO.173 OF 2006

1. Ameet Dalal & others. ...Petitioners.

vs.

Kaushik Kalyan Mazumdar. ...Respondent.

Mr.Tushar Bhavsar i/b. Prakash Punjabi & co., for Petitioners 3(a) & 3 (b) in support/ applicants.

Ms.Sharma i/b. Amol Doijode, for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 6th November,2006..

P.C.:-

1. This is a notice of motion taken out by the original petitioner no.3(a) and 3(b) for restoration of the arbitration petition no.173 of 2006. That petition has been disposed of by the Court by order dated 19.7.2006. Perusal of the order dated 19.7.2006 shows that the consent terms between the respondent and petitioner no.1 and the

consent terms between the respondent and petitioner no.2 were filed before the Court. Those consent terms were taken on record and the petition as between the respondent and petitioner nos. 1 and 2 was disposed of in terms of the consent terms. So far as the petitioner nos.3 (a) and 3(b) are concerned, the Court recorded statement made on behalf of the Advocate that she has no instruction to appear on behalf of the petitioner nos.3(a) and 3(b). Therefore, the Court has dismissed the petition of the petitioner nos.3(a) and 3(b).

2. The applicants themselves have produced on record a copy of the letter written by the Advocate concerned to the petitioner nos.3(a) and 3(b) dated 17.7.2006 that is before the order dated 19.7.2006 was made. Perusal of that letter shows that by letter dated 30.6.2006 M/s.Prakash M/s.Prakash Punjabi & Co. Advocates under instructions from petitioners 3(a) and 3(b) had informed the original Advocate of petitioner nos.3(a) and 3(b) viz. M & M Legal Ventures that a copy of the petition and related proceedings be handed over to them. Accordingly, the Advocate handed over the papers to the new Advocates. It is further stated in paragraph no.7 that when the matter came up before the Court on 7.7.2006 Advocates M/s.Prakash Punjabi & Co. told that they will file vakalatnama on behalf of the petitioners 3 (a) and 3(b). It appears that despite assurance Advocates M/s.Prakash Punjabi & Co. did not file vakalatnama on behalf of the petitioners 3(a)

and 3(b). Therefore, statement was made on behalf of Advocates M & M. Legal Ventures that they have no instructions to appear on behalf of the petitioners 3(a) and 3(b). Thus, the statement made and the circumstance under which the statement was made, is completely explained by the Advocates. Though copy of that letter is annexed to the affidavit filed by Dr.Tej Kuchroo, in the affidavit there is nothing stated as to why the statements made in that letter are not correct. I do not find even a statement made in the affidavit that the explanation given by the lawyer in the letter is incorrect or false. Therefore, the letter has to be accepted at its face value. If it is done, no fault can be found with the lawyer telling the Court that he has no instructions to appear on behalf of the petitioners 3(a) and 3(b). What is surprising is that even without claiming that what is stated in the letter dated 17.7.2006 is incorrect, an allegation is made that the Advocate was not justified in declining to appear on behalf the petitioners 3(a) and 3(b) when the order dated 19.7.2006 was made. In these circumstances, therefore, the notice of motion cannot be granted. The notice of motion is disposed of.

3. The petitioners 3(a) and 3(b) has, without any justification, made unnecessary allegations against the lawyer and therefore, in my opinion, exemplary costs have to be imposed on the petitioners 3(a) and 3(b).. The petitioner nos.3(a) and 3(b) who have taken out this

notice of motion are directed to pay costs of this notice of motion Rs.10,000/- to the respondent.